

TOTAL WAREHOUSE

RENTAL TERMS AND CONDITIONS

Lessee must check engine oil, water and fuel daily. Lessee is responsible for all tire maintenance, fuel, missing parts and all damage other than normal wear. Any damage to this Equipment resulting from improper care will be charged directly to Lessee. The contract shall extend beyond the term at the same terms if Lessee holds the Equipment over the specified term of lease.

- 1. Equipment Location:** The Equipment will be delivered to and used at the listed address unless otherwise noted on the front of this contract.
- 2. Tires:** All damage to tracks, tires, and tubes caused by blow-out, bruises, cuts, road hazards and other causes inherent to the use of the Equipment is the responsibility of the Lessee.
- 3. Theft:** Lessee is responsible for the theft of the Equipment, until Lessor takes possession of the Equipment.
- 4. Malfunctioning Equipment:** Should the Equipment become unsafe, malfunction or require repair, Lessee shall immediately cease using such Equipment and immediately notify the Lessor. If such condition is the result of normal operation, Lessor will repair or replace the Equipment with similar Equipment in working order if such replacement Equipment is available. Lessor has no obligation to replace Equipment rendered inoperable by misuse, abuse or neglect.
- 5. Past Due Accounts:** Interest on all past due amounts shall accrue at the lesser of: a) 1.5% per month, or b) the highest rate permitted by law.
- 6. Deposit:** Lessee acknowledges that one of the purposes and intents of the deposit, if a deposit is requested, is to secure and guarantee complete performance of Lessee's obligations under the contract.
- 7. Possession/Title:** Lessee's right to possession of the Equipment terminates on the return date indicated on the front of this contract or upon termination of this Agreement, whichever occurs first. Retention of possession after this date constitutes a material breach of this Agreement. Time is of the essence of this Agreement. Any extension of this Agreement must be agreed upon in writing. Title to the Equipment is and shall remain in Lessor. If the Equipment is not returned and/or is levied upon for any reason whatsoever, Lessor may terminate this Agreement without further notice, retake said items without further notice or legal process and use whatever force is reasonably necessary to do so. Lessee hereby agrees to indemnify, defend, and hold Lessor harmless from any and all claims and costs arising from such retaking. If Equipment is levied upon, Lessee shall notify Lessor immediately.
- 8. Receipt/Inspection of Equipment:** Lessee hires the Equipment on an "AS IS" basis. Lessee acknowledges that it has personally inspected the Equipment prior to its leaving Lessor (regardless of point of delivery) and finds it suitable for its needs. Lessee acknowledges receipt of all items listed in this Agreement in good working order and repair and that it understands its proper operation and use without further instructions regarding operation and use from Lessor. Lessee acknowledges that it has had an opportunity to inspect all hitches, bolts, safety chains, hauling tongues and other devices and materials used to connect the Equipment to Lessee's vehicle, if any, and Lessee declares that it has received the Equipment in a secure and operative condition.
- 9. Solvency:** Lessee represents to Lessor that Lessee is not insolvent and should he become insolvent, that it will return all Equipment to Lessor immediately.
- 10. Rental Period/Rate/Payment:** Rental period is for a maximum of 24 hours unless a longer term is specified in the "return date." Rental charges begin immediately upon delivery of the Equipment to the location directed by the Lessee or upon Equipment leaving Lessor, whichever happens first. Rental charges end upon return of the Equipment to Lessor in an acceptable condition. If the Equipment is returned prior to the end of the minimum rental period, the rental due shall be for the entire designated rental period. Lessor may terminate or cancel rental at any time and retake the Equipment without further notice in case of violation by Lessee of any terms or conditions of this Agreement. Lessee agrees to pay any collection costs and attorneys' fees incurred in relation to any matter arising under this Agreement, including trials, appeals and bankruptcy proceedings. Rental rates are based upon single shift usage. Overtime usage is determined by service meter hour readings. If Lessee makes greater use of the Equipment, it is agreed that the additional usage will be charged.
- 11. Ordinary Wear and Tear:** "Ordinary wear and tear" shall mean only the normal deterioration of the Equipment caused by ordinary, reasonable and proper use of the Equipment on a one-shift basis. Damage which is not "ordinary wear and tear" includes but is not limited to: damage resulting from lack of fuel or lubrication, failure to maintain proper oil, water, hydraulic or air pressure levels, damage due to overturning, overloading or exceeding a rated capacity; improper use; abuse; lack of cleaning; tire or track damages. Lessee shall be responsible for all damage not caused from ordinary wear and tear
- 12. Compliance with Laws/Use of Equipment:** Lessee agrees not to use or allow anyone to use the Equipment for any illegal purpose or in any illegal manner. Lessee acknowledges that Lessor has no physical control over the use of the Equipment. Lessee agrees at his sole cost and expense to comply with all municipal, county, state and federal laws, ordinances and regulations (including OSHA) which may apply to the use of the Equipment during the rental period. Lessee further agrees to pay all licenses, fees, permits or taxes arising from his use of the Equipment, including any subsequently determined to be due as a result of an audit. Lessee shall not permit Equipment to be operated by any person other than Lessee or Lessee's duly authorized employee, who has experience and training in the safe and proper use and operation of the Equipment, and is not under the influence of alcohol, intoxicants, narcotics or drugs. Lessee shall not allow any person to use or operate the Equipment when it is in need of repair or when it is in an unsafe condition or situation; modify, misuse, harm or abuse the Equipment; permit any repairs to the Equipment without Lessor's written permission; or allow a lien to be placed upon the Equipment. Lessee agrees to check filters, oil, fluid levels and air pressure and to clean and visually inspect the Equipment at least daily and to discontinue use and immediately notify Lessor when Equipment is found to need repair or maintenance. acknowledges that Lessor has no responsibility to inspect the Equipment while it is in Lessee's possession. If the Equipment becomes unsafe or requires repair, Lessee shall discontinue using it and notify Lessor immediately. Lessee acknowledges that Lessor has no responsibility to inspect the Equipment while it is in Lessee's possession. If the Equipment becomes unsafe or requires repair, Lessee shall discontinue using it and notify Lessor immediately.

13. Contamination-Free Return of Equipment: Lessee agrees to return the Equipment to Lessor during regular business hours upon "return date" or immediately upon termination or cancellation of this Agreement, whichever occurs first. Lessee agrees to return Equipment free of contamination by Hazardous Substances (as defined by state and federal laws) and agrees that the cost of any cleaning and decontamination caused by Lessee's failure to do so will be Lessee's responsibility. Lessee must inform Lessor if the Equipment has been in contact with Hazardous Substances.

14. Sole Remedy: Lessee's sole remedy for any failure of or defect in the Equipment shall be termination of the rental charges at the time of failure, provided that Lessee notifies Lessor immediately of such failure and returns the Equipment to Lessor within 24 hours of such failure. Lessor shall not be liable for damages of any kind, including special, incidental or consequential damages.

15. Purchase Orders: Any use of Lessee's purchase order number in or on this Agreement is for Lessee's convenience in identification only.

16. Location of Equipment: Lessee shall not move Equipment from the address at which Lessee represented it was to be used.

17. Default: Should Lessee in any way fail to observe or comply with any provision of this Agreement, Lessor may, at its sole option, exercise any and all of the following remedies: (a) termination of this Agreement, (b) retake the Equipment, (c) declare any outstanding rent and charges due and payable and initiate legal process to recover the monies, (d) pursue any of the remedies available to Lessor. Exercise of any remedy available to Lessor shall not constitute an election of remedies or a waiver of any additional remedies to which Lessor may be entitled.

18. Retaking of Equipment: If for any reason it becomes necessary for Lessor to retake the Equipment, permission is granted to Lessor to enter upon property, including tribal lands, and retake the Equipment without further notice.

19. Accidents and Indemnification: For and in additional consideration of providing the Equipment, Lessee agrees to defend, indemnify and hold harmless Lessor, its assigns, the wholesale distributor, or the manufacturer, its affiliated companies, and its and their officers, agents and employees for, from and against all loss, liability, claim, action or expense, including reasonable attorneys' fees, arising out of Lessee's use or possession of the Equipment. The foregoing includes, without limitation, property damage and bodily injury, including death, sustained by any person or persons, including, but not limited to, employees of Lessee, arising out of the maintenance, use, possession, operation, erection, dismantling, servicing or transportation of the Equipment or Lessee's failure to comply with the terms of this Agreement, except to the extent caused solely by the gross negligence or the intentional wrongful act of Lessor.

20. Insurance and Loss Damage Waiver: Lessee will, at all times during the term of this Agreement, maintain general and auto liability coverages in amounts that may be required from time to time by Lessor, of not less than \$1,000,000. If Lessee does not elect loss damage waiver, Lessee shall maintain contractor's equipment physical damage coverage for leased/rented equipment in an amount of the replacement value of the Equipment. Lessee shall provide a certificate evidencing such insurance with Lessor named as an additional insured and loss payee. The loss damage waiver is for accidental damage and does not relieve Lessee from responsibility for damage to the Equipment caused by gross negligence, abuse or other willful misconduct.

21. Venue, Sovereign Immunity and Jury Trial Waiver: Lessee agrees that jurisdiction and venue for the litigation of any disputes arising under this contract shall be in the applicable state or federal court in the country in which Lessor is located. Sovereign immunity is hereby waived. LESSOR AND LESSEE HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING OR CONNECTED IN ANY WAY WITH THIS CONTRACT.

22. Notice of Non-Waiver/Severability: No failure of Lessor to insist upon strict performance by Lessee as regards to any provision of this Agreement shall be interpreted as a waiver of Lessor's right to demand strict compliance with all other provisions of this Agreement against Lessee or any other person. The provisions of this Agreement shall be severable so that unenforceability, invalidity or waiver of any provision shall not affect any other provision.

23. Assignment: Lessee agrees that Lessor may assign this Rental Agreement and all right, title, and interest of Lessor in and to the Equipment, and all sums due or to become due to Lessor hereunder (of which assignment Lessee hereby waives notice), and Lessee agrees to recognize such assignment. Lessee's obligation to pay rent under this Rental Agreement will not as to any such assignee be subject to any diminution arising out of any breach of any obligation hereunder or other liability of Lessor to Lessee. Lessee may not assign this Rental Agreement. Lessee further agrees to make rental payments directly to any assignee of Lessor, upon and following receipt of evidence of assignment and a written request to do so, and Lessor agrees to recognize any payment so made as satisfaction of Lessee's obligation to make that payment hereunder.

24. Other Provisions: It is agreed that this Lease contains all of the Agreement of the parties, and it is further agreed that no representation, warranty or Agreements other than those set forth herein shall be binding upon either of the parties hereto unless the same is reduced to writing, signed by both parties to this Lease and purports to be an express modification of this contract.